THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 19343 of 1998

Dated:19-08-2005

Between:

G. Mahender s/o. Ramaiah
o/o the third respondent, r/o. Mahaboobabad, Warangal District.

..... PETITIONER

AND

1 The Secretary, A.P.Social Welfare Residential Educational Institutions Society (Registered), Hyderabad.
2 The District Collector, Warangal.
3 The Principal, A.P.S.W.Residential School (Girls), Mahaboobabad, Warangal District.

.....RESPONDENTS

THE HONOURABLE SRI JUSTICE C.V.RAMULU

W.P.NO.19343 OF 1998

ORDER:

This writ petition is filed seeking certiorari to call for the records relating to the proceedings dated 26-6-1998 issued by the first respondent and to quash the same as arbitrary and illegal and consequentially direct the respondents to promote the petitioner as Senior Assistant and grant such other benefits.

It is the case of the petitioner that he was initially appointed on daily wage basis as typist in the B.C.Corporation with effect from 31-1-1986. Subsequently on temporary basis, he was appointed in the regular post by the Collector who was the then chairman of the Society. Further he was appointed with effect from 7-8-1986 as Junior Assistant in the A.P. Social Welfare Residential Girls School, Parkal in Warangal district. This appointment was by way of transfer. He has been discharging duties to the utmost satisfaction of one and all in the A.P.Social Welfare Residential Girls School, at Parkal without any blame . While so, the Collector reposted the petitioner in the B.C.Corporation at Warangal, vide proceedings No.A1/888/87 dated 30-12-1987. The reposting orders were challenged before this court in writ petition No.16476 of 1991 and the same was allowed directing the respondents to regularize the services of the petitioner in A.P.Social Welfare Residential School.

The respondents failed to comply the orders of this court in view of the protest made by some other employees. Therefore, he was compelled to file another writ petition No.8428 of 1993 and the same was disposed of on 8-10-1993 directing the respondents to take a decision with regard to regularization of the services of the petitioner within two weeks . When the said orders were not complied, the petitioner was constrained to file contempt case before this court. On receipt of notice in the contempt proceedings, the respondents complied with the orders of this court in writ petition No. 8428 of 1993 dated 8-10-1993 regularizing the services of the petitioner with retrospective effect from the date of first appointment i e. from 14-8-1986 through proceedings dated 5-2-1986. While the matters stood thus, the respondents issued a show cause notice dated 21-4-1998 asking the petitioner as to why he should not be

repatriated to his parent department, which had in fact, attained finality in the proceedings of this court and on regularizing the services of the petitioner in the A.P.Social Welfare Residential school at Paraka. The petitioner submitted a detailed explanation denying the same. However, the impugned proceedings dated 26-6-1998 was passed stating that his very initial appointment was irregular and as such, the question of regularizing the services in the A.P.Social Welfare Residential School does not arise and further sought to repatriate to the Executive Officer, B.C. Service Cooperative Society Limited, Warangal.

A detailed counter affidavit has been filed by the respondents enumerating all the events that had taken place right from the date of his transfer to their institution i.e. A.P.Social Welfare Residential Educational Institutions Society, Parkal. It is stated that the continuation of the petitioner was in pursuance of the interim orders passed by the A.P.Administrative Tribunal, when he approached and not as a matter of right. However, O.A. filed before the Administrative Tribunal was withdrawn by the petitioner and filed the writ petition No.16476 of 1991, which was disposed of directing the respondents with following directions.

> *"…….Thereafter, an objection was raised that the R.P. is not maintainable as the respondent-organization is a society. Therefore, the petitioner withdrew the R.P. and field the present with petition. The contention of the petitioner is that though he was initially appointed on daily wages, later he was appointed on temporary basis by transfer as Junior Assistant in School Welfare Residential School, Parkal and since then he was working there drawing monthly salary and therefore, he is entitled for regularization. It is stated that the petitioner filed a representation dated 15-7-87. If no such representation is found,, it is open to the petitioner to file a fresh representation within one week and the respondent shall consider the same and dispose it of within four weeks from the date of receipt of the order. Until then, status quo as on today shall be maintained.*

The writ petition is accordingly disposed of. No costs."

Though the orders of this Court have been complied and services were regularized, later on it was found that the petitioner was not entitled for regularization

since his very first appointment was illegal and not in accordance with the procedure laid down. Therefore, a show cause notice dated 21-4-1998 has been issued and thereafter, impugned proceedings were passed. There is no illegality or irregularity committed by the respondents in passing the impugned order.

I have given my earnest consideration to the respective submissions made by learned counsel on either side and also perused the material available on record.

At the out set, I am of the opinion that the impugned order is nothing but trying to annul the orders passed by this court which are implemented by them. Admittedly the orders passed in writ petition No.16476 of 1991 dated 23-12-1991 attained finality.

In pursuance of that, the respondents have issued proceedings dated 5-2-1996 regularizing the services of the petitioner as Junior Assistant but with retrospective effect i.e. from the date of his first appointment 14-8-1986 in the A.P. Social Welfare Residential School (girls), Parakal, in the existing vacancy.

The status of the petitioner and the method in which he was appointed was sought to be reopened by way of issuing show cause notice and the impugned proceedings. In fact, the petitioner was originally appointed in the B.C.Corporation and thereafter, he was transferred to the A.P.Social Welfare Residential School, Parakal. In the teeth of evidence, it is most unfortunate that the respondents have started digging up something which is no more available to them. It is not their case that he was irregularly appointed in this institution. The respondents want to say something beyond which is not in their purview. If at all, anybody to say that the initial appointment of the petitioner was irregular, it is the B.C. Corporation, wherein he was serving and transferred and attached to the A.P.Social Welfare Residential School and when his services were not regularized, he approached this court and filed the writ petition No.16476 of 1991.Then he was absorbed and services were regularized as Junior Assistant in the A.P. Residential Social Welfare School, Parkal, in pursuance of the orders passed by this court in the above said writ petition. The said orders in the writ petition attained finality and the services of the petitioner were regularized with effect from 5-2-1996. Two years, thereafter, a show cause notice dated 21-4-1998 was Issued raising all irrelevant grounds and ultimately after calling for explanation, the impugned proceedings were passed. Though the plea as to irregular appointment of the petitioner initially was available to

the respondent when the writ petition and contempt proceedings filed by the petitioner, the respondents have not taken such a plea. Therefore, they cannot be allowed to do so in this writ petition at this length of time. It may not be out of place to notice that the arguments advanced by the learned counsel for the petitioner that since the petitioner has approached this Court time and again and filed contempt proceedings, the respondents have initiated the impugned proceedings and wanted to get rid of him, apart from fact that some of the regular employees opposed the regularization of the services of the petitioner from the date of his initial appointment in the organization. I am of the opinion that the orders passed by the respondents is most unfortunate, atrocious and unwarranted. Therefore, the impugned order is set-aside.

Therefore, the writ petition is accordingly allowed. No order as to costs.

C.V.RAMULU,J

19-08-2005

Note:

C.C. in three days

B/o.

Stp